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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/493,819	01/28/2000	Naoki Shibata	PM 266204	2698
7590	07/06/2004		EXAMINER	
MCGINN & GIBBS, PLLC 8321 OLD COURTHOUSE ROAD SUITE200 VIENNA, VA 22182-3817			WILLE, DOUGLAS A	
			ART UNIT	PAPER NUMBER
			2814	

DATE MAILED: 07/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/493,819	SHIBATA, NAOKI	

  

<b>Examiner</b>	<b>Art Unit</b>	
Douglas A Wille	2814	<i>AN</i>

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 21 May 2004.  
 2a) This action is **FINAL**.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1,3,5,7-11 and 18 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1,3,5,7-11,18 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \*    c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.  
 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 7, 9 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Edmond et al. in view of Duggan.

3. With respect to claim 1, Edmond et al. show a group III nitride light emitter (see cover Figure and column 4, line 57 et seq.) with a substrate 21, a buffer layer 23 directly on the substrate, a heterostructure layer 27, directly on the buffer, which can be  $A_xB_{1-x}N$  (column 5, line 48) where A and B are Group II elements and x, y can range from 0 – 1 inclusive. Also shown is an active layer 25, directly on the heterostructure layer of  $A_xB_{1-x}N$  (column 5, line 48). Duggan shows that for III-nitride devices the addition of a graded layer can be used to reduce the interface strain and minimize dislocations (see abstract) and shows that graded layers can be provided only between the clad layers and the active layers (column 7, line 64) and that the graded layers can be provided between all the layers. It would have been obvious to include the graded layers shown by Duggan for the advantage shown.

4. With respect to claim 7, Edmond et al. show a buffer layer of  $A_xB_{1-x}N$  (column 5, line 22), which could be GaN.

5. With respect to claim 9, note that the claimed stoichiometry is within the ranges shown and the choice of a particular value is a matter of design choice.

6. With respect to claim 18, Edmond et al. show layer 26 is GaN.
7. Claims 3, 5, 8 and 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Edmond et al. in view of Duggan and further in view of Nitta et al.
8. With respect to claim 3, Nitta et al. show a blue light emitter (see Figure 1 and column 2, line 62 et seq.) where the active layer 104 can be InGaN (column 3, line 43) and the clad layer 103 can be InAlGaN (column 3, line 33). Note that the wavelength of the emitted light can be adjusted by varying the compound (column 3, line 52) and it would be obvious to vary the composition of the clad layer to provide sufficient optical confinement and to use a compound with Al to increase the wavelength range available. Note also that Duggan shows that the grading is complete with the interface being identical on either side (see for instance column 9, line 36) and thus provides lattice match.
9. With respect to claim 5, Duggan shows that for III-nitride devices the addition of a graded layer can be used to reduce the interface strain and minimize dislocations (see abstract) and shows that graded layers can be provided only between the clad layers and the active layers (column 7, line 64). It would have been obvious to include the graded layers shown by Duggan for the advantage shown.
10. With respect to claim 8, Edmond et al. show a buffer layer of  $A_xB_{1-x}N$  (column 5, line 22) which could be GaN.
11. With respect to claim 10, note that the claimed stoichiometry is within the ranges shown by Nitta et al. and the choice of a particular value is a matter of design choice.

12. With respect to claim 11, in standard form, as described by the references quoted above, the double heterostructure shows the emitting layer as having a smaller bandgap than the surrounding layers and is inherent in the design.

***Response to Arguments***

13. Applicant's arguments filed 1/22/04 have been fully considered but they are not persuasive.

14. Applicant states that the p-GaN layer is not graded but since this is not a claimed feature it is not addressed.

15. Applicant states that the p-GaN layer is on the AlGaN layer but this is not shown by Examiner and note that the cover Figure is referred to.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Douglas A Wille whose telephone number is (571) 272-1721. The examiner can normally be reached on M-F (6:15-2:45).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wael Fahmy can be reached on (571) 272-1705. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

Application/Control Number: 09/493,819  
Art Unit: 2814

Page 5



Douglas A. Wille  
Primary Examiner

July 1, 2004